

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------------------|---|-------------------|
| CRYSTAL BYRD and BRIAN BYRD, |) | |
| Individually, and on Behalf of all |) | CIVIL DIVISION |
| Similarly Situated Persons, |) | |
| |) | |
| Plaintiffs, |) | No. 1:11-cv-00101 |
| |) | |
| v. |) | |
| |) | |
| AARON'S, INC., |) | |
| ASPEN WAY ENTERPRISES, INC., |) | |
| d/b/a Aaron's Sales and Leasing, |) | |
| a franchisee of AARON'S, INC.; |) | |
| JOHN DOES (1-100) AARON'S |) | |
| FRANCHISEES; and |) | |
| DESIGNERWARE, LLC, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT DESIGNERWARE, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT PURSUANT TO F.R.C.P. 12(b)(1) AND F.R.C.P. 12(b)(6)**

AND NOW, comes Defendant, DesignerWare, LLC (hereinafter "DesignerWare"), by and through its attorneys, Burns White LLC, and files the within Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to F.R.C.P. 12(b)(1) and 12(b)(6) as follows:

Pursuant to F.R.C.P. 12(b)(1) and 12(b)(6), Defendant DesignerWare hereby seeks dismissal from this case based on Plaintiffs' lack of standing to sue DesignerWare and the failure to state a claim upon which relief can be granted, as to each of Plaintiffs' causes of action:

- (1) Section 2511 of the Electronic Communications Privacy Act, 18 U.S.C.A. §2511 (Count I);
- (2) Section 2512 of the Electronic Communications Privacy Act, 18 U.S.C.A. §2512 (Count II); and

(3) Section 1030 of the Computer Fraud and Abuse Act, 18 U.S.C.A. §1030, *et seq*
(Count III).

DesignerWare's Motion is supported by the Brief filed simultaneously herewith, which is
incorporated herein by reference.

Respectfully submitted,

BURNS WHITE LLC

By: /s/ David B. White
David B. White, Esquire
PA I.D. No. 36684
dbwhite@burnswwhite.com

/s/ Lyle D. Washowich
Lyle D. Washowich, Esquire
PA I.D. No. 84348
ldwashowich@burnswwhite.com

/s/ Brian M. Mancos
Brian M. Mancos, Esquire
PA I.D. No. 89720
bmmancos@burnswwhite.com
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
Phone: (412) 995-3000
Fax: (412) 995-3300

Attorneys for Defendant,
DesignerWare, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2011 a copy of Defendant DesignerWare, LLC's Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to F.R.C.P. 12(b)(1) and F.R.C.P. 12(b)(6) was served on counsel of record, via the Court's electronic case filing system, addressed as follows:

Leonard A. Davis, Esquire
Herman, Herman, Katz & Cotlar, L.L.P.
820 O'Keefe Avenue
New Orleans, LA 70113
Via email: ldavis@hhkc.com

James F. Green, Esquire
Herman Gerel LLP
4900 Seminary Road
Suite 650
Alexandria, VA 22311
Via email: hgreen@ashcraftlaw.com

Michael W. Heaviside, Esquire
Herman Gerel LLP
4900 Seminary Road
Suite 650
Alexandria, VA 22311
Via email: mheaviside@ashcraftlaw.com

Maury A. Herman, Esquire
Herman, Herman, Katz & Cotlar, L.L.P.
820 O'Keefe Avenue
New Orleans, LA 70113
Via email: mherman@hhkc.com

Andrea S. Hirsch, Esquire
Herman Gerel LLP
230 Peachtree Street, NW
Suite 2260
Atlanta, GA 30303
Via email: ahirsch@hermangerel

Frederick S. Longer, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Via email: flonger@lfsblaw.com

Daniel C. Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Via Email: dlevin@lfsblaw.com

Michelle Parfitt, Esquire
Herman Gerel, LLP
4900 Seminary Road
Suite 650
Alexandria, VA 22311
Via email: mparf@aol.com

Christopher V. Tisi, Esquire
Herman Gerel, LLP
2000 L Street, NW
Suite 400
Washington, DC 20036
Via email: cvtisi@aol.com

Neal R. Devlin, Esquire
Knox, McLaughlin, Gornall & Sennett
120 West Tenth Street
Erie, PA 16501
Via Email: ndevlin@kmgslaw.com

Richard A. Lanzillo, Esquire
Knox, McLaughlin, Gornall & Sennett
120 West Tenth Street
Erie, PA 16501
Via Email: rlanzillo@kmgslaw.com

Kristine McAlister Brown, Esquire
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309
Via Email: kristy.brown@alston.com

William Herman Jordan, Esquire
Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, GA 30309
Via Email: bill.jordan@alston.com

John H. Robinson, Esquire
Jamieson & Robinson, LLC
214 South Grant Street
Casper, WY 82601
Via Email: robinsn@vcn.com

Michael E. Begley, Esquire
Moulton Bellingham PC
Crowne Plaza
27 North 27th Street
Suite 1900
Billings, MT 59101
Via Email: mike.begley@moultonbellingham.com

Michele L. Braukmann, Esquire
Moulton Bellingham PC
Crowne Plaza
27 North 27th Street
Suite 1900
Billings, MT 59101
Via Email: michele.braukmann@moultonbellingham.com

Ross W. McLinden, Esquire
Moulton Bellingham PC
Crowne Plaza
27 North 27th Street
Suite 1900
Billings, MT 59101
Via Email: ross.mclinden@moultonbellingham.com

Anthony Willliott, Esquire
Theodore J. Kobus, Esquire
James A. McGovern, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
Via Email: ajwillliott@mdwgcg.com; tjkobus@mdwgcg.com; jamcgovern@mdwgcg.com

Respectfully submitted,

BURNS WHITE LLC

By: /s/ David B. White
David B. White, Esquire
Counsel for Defendant
DesignerWare, LLC